

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION**

BRANDON NICHOLAS BARNETT,

Plaintiff,

v.

NINA HILL, et al.,

Defendants.

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No. 1:19-CV-00008 JAR

**MEMORANDUM AND ORDER**

This matter is before the Court on plaintiff's motion to proceed in forma pauperis on appeal. Plaintiff may not proceed in forma pauperis on appeal because he has accumulated three "strikes" pursuant to 28 U.S.C. § 1915(g), and he does not qualify for the imminent danger exception thereto.

Plaintiff is a prisoner who, while incarcerated or detained, has filed at least three civil actions that were dismissed for failure to state a claim upon which relief may be granted or on res judicata grounds.<sup>1</sup> *See Barnett v. 5th Judicial Circuit Court Buchanan County, et al.*, No. 5:11-cv-6031-DW (W.D. Mo. May 18, 2011) (summary dismissal for failure to state a claim upon which relief may be granted), *Barnett v. Buchanan County, Missouri, et al.*, No. 5:15-cv-6044-DW (W.D. Mo. May 8, 2015) (same), and *Barnett v. Hinton, et al.*, No. 5:18-cv-6115-HFS (W.D. Mo. Nov. 5, 2018) (summary dismissal on res judicata grounds).<sup>2</sup> Further, Plaintiff has not demonstrated that he is in imminent danger. Thus, the exception to the three-strikes provision in § 1915(g) does not apply.

Accordingly,

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<sup>1</sup>The Eighth Circuit Court of Appeals has recognized that dismissals on res judicata grounds are properly counted as "strikes" for purposes of 28 U.S.C. § 1915(g). *See Higgins v. Carpenter*, 258 F.3d 797, 801 (8th Cir. 2001) (prior cases dismissed as barred by res judicata qualified as strikes); *Burke v. St. Louis City Jails*, 603 F. App'x 525 (8th Cir. 2015) (affirming the portion of the district court's decision determining that the plaintiff had acquired three qualifying strikes when one of the cases the district court cited was dismissed on res judicata grounds); *see also Harmon v. Webster*, 263 F. App'x 844, 846 (11th Cir. 2008) (affirming the district court's determination that its dismissal on res judicata grounds should count as a strike for purposes of § 1915(g)).


<sup>2</sup> *See also Barnett v. Neal*, No. 19-2616 (8th Cir. 2019) (denying leave to proceed in forma pauperis on appeal and affirming the District Court's finding that plaintiff had three strikes).

**IT IS HEREBY ORDERED** that plaintiff's motion to proceed in forma pauperis on appeal [Doc. #51] is **DENIED**.

**IT IS FURTHER ORDERED** that within thirty (30) days from the date of this Order, plaintiff shall pay to this Court the full \$505.00 fee for filing an appeal. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for the appeal of the instant action.

**IT IS FURTHER ORDERED** that plaintiff shall file any future documents or pleadings in connection with his appeal directly with the United States Court of Appeals for the Eighth Circuit.

Dated this 3rd day of March, 2020.

  
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**JOHN A. ROSS**  
**UNITED STATES DISTRICT JUDGE**